IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 428.

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

UNITED BENEFIT LIFE INSURANCE COMPANY.

OPPOSITION OF RESPONDENT TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

United Benefit Life Insurance Company, respondent herein, having withheld its consent to the filing by the Investment Company Institute and by the National Association of Securities Dealers Inc. of a brief as *amici curiae* in support of the position of the Solicitor General acting on behalf of the Securities and Exchange Commission, opposes the grant of the motion now made by these trade associations which represent the business interests of the securities industry.

The petition for certiorari herein which was filed by the Solicitor General on behalf of the Securities and Exchange Commission was granted on October 24, 1966. The Solicitor General filed a brief on the merits on December 20, 1966.

At issue herein is the question whether the court of appeals correctly held that the deferred annuity policy in question issued by respondent insurance company is not a security but an insurance product within the meaning of the Court's decision in the VALIC case (*Securities and Exchange Commission v. The Variable Life Insurance Company of America,* 359 U. S. 65). "The result in this case, as both parties recognize, is controlled by the Supreme Court's recent decision in the VALIC case" (Petition, p. 18).

The grounds for respondent's opposition are as follows:

1. The motion sets forth no facts or questions of law which movants believe will not be adequately presented by the parties. Supreme Court Rule 42(3).

As relates to movants' possible concern that the views of the Securities and Exchange Commission might not be adequately presented, respondent points out that the need for assistance for the Solicitor General and his staff (as well as for the General Counsel of the Securities and Exchange Commission and his staff) can hardly be assumed. The Solicitor General is, of course, competent to present adequately all facts and questions of law which are relevant. *Northern Securities Company v. United States,* 191 U. S. 555 (1903).

2. Consent to the filing of an *amicus* brief has been withheld by both parties.

Neither party has advised movants that it consents to the filing of a brief as *amici curiae.* Respondent

earlier withheld its consent, and movants do not aver in their motion that the Solicitor General has consented to the grant of the relief requested in the motion.

3. The views of the securities industry or the insurance industry are irrelevant.

Movants seek to present the view of the securities industry [1] with respect to the decision of the court below. These views—equally as would be the views of the insurance industry—are irrelevant to the Court's adjudication of the single legal issue before it. It would appear that this is also the position of the Solicitor General.

4. Movants do not seek to act as *amici curiae.*

Without ever having sought to intervene in the present case, movants seek to act—not as *amici curiae* —but as advocates. Movants do not seek to perform the basic function of an *amicus,* namely, advising the Court on the law to be applied. They seek merely to duplicate,[2] the argument contained in the brief of the Solicitor General.

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1. In their motion, movants assert (p. 4): "The Association and the Institute should be permitted to present their views with respect to the decision of the court below which directly affects the interests and business position of their members."

2. Upon movants representation that they would present "additional matters and arguments", the court below permitted the filing of an *amicus* brief. As noted in the present motion (p. 3), however, that brief presented an approach and argument which merely "supplemented" that of the Securities and Exchange Commission, and contained no additional matters.

The motion for leave to file a brief as *amici curiae* should be denied.

Respectfully submitted,

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December, 1966.